

NOVA SCOTIA COURT OF APPEAL

Citation: *Hayward v. Hayward*, 2011 NSCA 118

Date: 20111220

Docket: CA 334009

Registry: Halifax

Between:

Michael Philip Hayward in his personal capacity as well as in his
capacity as Administrator of the Estate of George Michael Hayward

Appellant

v.

Nancy Vera Hayward

Respondent

Judges:

The Honourable Justice Linda L. Oland; and
The Honourable Justice Joel E. Fichaud and
The Honourable Justice Duncan R. Beveridge,
concurring by separate reasons

Appeal Heard:

May 17, 2011, in Halifax, Nova Scotia

Subject:

Wills - Separation Agreements - Divorce - Sections 8A
and 19A of the *Wills Act* - Statutory Interpretation -
Retrospectivity

Summary:

While married, the testator made a will which named his spouse as his executor and beneficiary. After they separated, the couple signed a separation agreement. They later divorced. The testator did not change or revoke his will. He died after ss. 8A and 19A to the *Wills Act* came into effect. Their son was granted administration of the estate. His former spouse successfully applied for their son's removal and her appointment as executor and beneficiary. The son appeals.

Issues: Whether the judge erred in finding that s. 19A of the *Wills Act* did not apply, in failing to consider the separation agreement pursuant to s. 8A, and in his application of equitable estoppel to the facts in this case.

Result: Appeal allowed, with costs of both parties to be paid on a solicitor-client basis out of the estate.

(Oland, J.A.) When construed, in their ordinary literal sense, the words of s. 19A are clear and unambiguous, and demonstrate a legislative intention that the provision operate retrospectively. The presumption against interference with vested rights does not apply because the former spouse's entitlement under the will was no more than an expectancy. The judge erred in his interpretation of s. 8A. Since there was no evidence of reliance by the testator on acts of his former spouse, the estoppel argument is without merit. In the result, the appointment in the will of the testator's former spouse and the bequest to her of his estate are revoked. All other provisions of the will remain in full force and effect.

(Beveridge J.A.), concurring in result, the presumption against giving statutes retrospective operation did not apply. The judge at first instance did consider the separation agreement under s.8A, and made no error in his conclusion that the agreement did not express an intention by the testator to revoke or alter his will.

(Fichaud, J.A.), concurred in the result, and with Oland J.A.'s conclusions respecting ss. 19A, and would have allowed the appeal under both ss. 19A and 8A.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 50 pages.